

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Civil Action No. 09-CV-1213-ACT-LFG

HEALTH CARE SERVICES CORPORATION,

Plaintiff,

v.

SOUTHWEST TRANE and
PETERSON WATER TREATMENT,

Defendants.

**PLAINTIFF'S REFORMATTED OBJECTIONS TO DEFENDANTS' PROPOSED
TRIAL EXHIBITS WITH DESIGNATIONS**

COMES NOW Plaintiff Health Care Services Corporation ("HCSC"), by and through its attorneys, and clarifies its objections to the proposed trial exhibits of Defendants Peterson Water Treatment ("Peterson") and Southwest Trane ("Trane"). HCSC believes this revised format with specific exhibit references (replacing Doc. # 148) will facilitate the Court's ability to consider the objections, so that it can admit the properly offered exhibits prior to trial. [Doc. # 40]. If the Court would prefer another format, HCSC would be happy to provide a supplemental list.

HCSC also withdraws its objection to what has since been marked as Peterson's exhibit H, because Peterson has revised the portions to which HCSC objected.

Subsequent Remedial Measures: (FRE 407, NMRA 11-4-7)

The document was created, or the correspondence occurs, after the events at issue in this trial involving HCSC's changes to its water treatment, which Defendants contend is a basis for apportioning fault to HCSC.

Trane Exhibits: N; O; LL; MM; OO; PP; BBB.

Peterson Exhibits: BB.

Lack of Foundation/Hearsay: (FRE 801, 802, 104, 602, 901, 803(6), 1006)

No anticipated witness at trial will be able to testify as to the information contained in the correspondence or documents.

Trane Exhibits: D; F; J; K; M; N; P; Q; S; CC; DD; UU; CCC; HHH; III.

Peterson Exhibits: U; X; CC; DD.

Recipient is only anticipated trial witness, and will not be able to establish the truth of the matters asserted by non-testifying third-party author.

Trane Exhibits: G; H; I; O; R; S; T; U; Y; Z; HH; LL; MM; OO; PP; TT; VV; AAA; BBB.

Peterson Exhibits: F.

Rule of Completeness: (FRE 106; NMRA 106)

The complete document should be submitted to the jury, or has been proposed elsewhere.

Trane Exhibits: B; U; X; EE.

Authenticity/Misleading/Confusing: (FRE 403, NMRA 11-403)

Trane proposes exhibits that have been rearranged from their original formatting (as produced by HCSC and represented in proposed Exhibit 4), that duplicate other exhibits and contain notes from an unidentified source (presumably the non-testifying third-party responding to subpoena), and a hand-drawn demonstrative that is not nearly as accurate or understandable as Peterson's proposed demonstrative that accurately depicts the systems (Peterson proposed Exhibits A & B).

Trane Exhibits: EE; TT; LLL.

Insurance Reference: (Pretrial Orders)

The document makes reference to an insurance carrier, which this Court has indicated will not be allowed at trial.

Trane Exhibits: NN.

Peterson Exhibits: K.

Respectfully submitted this 1st day of February, 2011.

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ATTORNEYS FOR PLAINTIFF HEALTH
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of February, 2011, I filed the foregoing PLAINTIFF'S REFORMATTED OBJECTIONS TO DEFENDANTS' PROPOSED TRIAL EXHIBITS WITH DESIGNATIONS electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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